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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ANDREAS KYNAST and ULRICH KERSKEN

Appeal 2008-4854
Application 09/554,553
Technology Center 2800

Decided: January 26, 2009

Before MAHSHID D. SAADAT, MARC S. HOFF, and
ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

Appellants seek our review under 35 U.S.C. § 134 of the Examiner's final rejection of claims 8-18.¹ We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

INVENTION

Appellants' claimed invention is directed to terminal devices (in Fig. 2, terminals 1 and 2) having different processing capabilities that receive from a data provider 3 having a single data service 4 data via the transmission medium 10 wherein the transmitted data are correspondingly adapted to different processing capabilities of the terminal devices 1 and 2 by interfaces 6 and 7, respectively (Fig. 2 and Spec. 4:22-31).

Claim 8, reproduced below, is representative of the subject matter on appeal:

8. A method for transmitting information between an infrastructure and data users, the infrastructure including a service provider, the data users including terminal devices in a motor vehicle, the terminal devices having specific different data processing capabilities, the method comprising the steps of:

making a single data service available in a standardized format, using the infrastructure; and

via interfaces situated in the infrastructure, adapting data from the single data service in the standardized format to the different data processing capabilities of the terminal devices,

¹ Claims 1-7 were canceled by Amendment on January 21, 2004.

wherein the different data processing capabilities of the terminal devices are identified based on at least one of a terminal device identifier and a terminal device code transmitted by a respective terminal device to the service provider.

THE REJECTIONS

The Examiner relies upon the following as evidence of unpatentability:

Ellis	US 5,699,255	Dec. 16, 1997
Mankovitz	US 5,949,492	Sep. 07, 1999 (filed May 22, 1997)
Levac	US 5,872,926	Feb. 16, 1999 (filed May 31, 1996)

The following rejections are before us for review:

1. The Examiner rejected claims 8-14 and 16-18 under 35 U.S.C. § 103(a) as being unpatentable over Mankovitz in view of Levac.

2. The Examiner rejected claim 15 under 35 U.S.C. § 103(a) as being unpatentable over Mankovitz in view of Levac and further in view of Ellis.

Appellants argue claims 8-14 and 16-18 as a group with claim 8 as representative (App. Br. 7-8). Appellants also argue claims 11 and 14-17 as a group with claim 11 as representative (App. Br. 7-8).² Appellants have presented no further arguments as to the additional reference of Ellis used in rejecting claim

² Only arguments made by Appellants have been considered in this decision. Arguments which Appellants could have made but did not make in the Brief have not been considered and are deemed waived. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004).

15, but instead rely on the arguments provided for claim 8 (App. Br. 9-13). We note that merely presenting case law with no attempt to point out how or why the claims patentably distinguish over the prior art does not amount to a separate argument for patentability. *See* 37 C.F.R. § 41.37(c)(1)(vii) (2004). *See also In re Nielson*, 816 F.2d 1567, 1572 (Fed. Cir. 1987). Accordingly, claims 7-18 stand or fall with claim 8. *See* 37 C.F.R. § 41.37 (c)(1)(vii) (2004).

OBVIOUSNESS ISSUE

Appellants contend that neither Mankovitz nor Levac teach identifying data processing capabilities of terminal devices of the data users based on at least one of a terminal identifier and “*a terminal device code transmitted by a respective terminal device to the service provider*” (App. Br. 8) (emphasis in original). More specifically, Appellants contend that according to Levac, the message server receives all the information about the destination from the message source, not from the destination (App. Br. 8).

The Examiner responds that the claims do not require that the terminal requesting to send the message or service be the terminal receiving it (Ans. 9). Furthermore, the Examiner states that Mankovitz teaches the situation when the requestor and the receiver are the same (Ans. 9 and col. 7, ll. 35-46).

The issue before us, then, is as follows:

Have Appellants shown that the Examiner erred by determining that the Mankovitz and Levac combination teaches “a terminal device code transmitted by a respective terminal device to the service provider” as claimed?

FINDINGS OF FACT

The relevant facts include the following:

1. Levac teaches that the message server receives a communication generated by a message source (col. 2, ll. 8-9).
2. Levac further teaches that the communication includes a message portion and a message parameter portion, which includes information specifying a communication destination having at least one of the types of communication devices (col. 2, ll. 9-13).
3. Levac teaches that the message server dispatches the communication to the communication device interface in response to the message parameter portion (col. 2, ll. 13-16).
4. Levac further teaches that the communication interface converts the message portion and generates at least one converted message in the format compatible with the communication device at the communication destination and transmits the message to the communication destination (col. 2, ll. 16-21).
5. Mankovitz teaches that the requestor of auxiliary information is also the recipient of that information (col. 7, ll. 35-46).

PRINCIPLES OF LAW

The Examiner's articulated reasoning in the rejection must possess a rational underpinning to support the legal conclusion of obviousness. *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). The Supreme Court, citing *In re Kahn*, 441 F.3d at 988,

stated that "rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007). However, "the analysis need not seek out precise teachings directed to the specific subject matter of the challenged claim, for a court can take account of the inferences and creative steps that a person of ordinary skill in the art would employ." *Id.*

Although claims are interpreted in light of the specification, limitations from the specification are not read into the claims. *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993).

ANALYSIS

Have Appellants shown that the Examiner erred by determining that the Mankovitz and Levac combination teaches identifying data processing capabilities based on "a terminal device code transmitted by a respective terminal device to the service provider" as claimed?

Levac teaches that the message server (i.e., service provider) receives a communication generated by a message source (i.e., terminal device) (Finding of Fact 1). Levac further teaches that the communication includes a message portion and a message parameter portion (i.e., terminal device code), which includes

information specifying a communication destination having at least one of the communication devices (Finding of Fact 2). Levac teaches that the message server dispatches the communication to the communication device interface in response to the message parameter portion (Finding of Fact 3). Levac further teaches that the communication interface converts the message portion and generates at least one converted message in the format compatible with the communication device at the communication destination and transmits the message to the communication destination (Finding of Fact 4). Thus, Levac teaches a terminal device code (i.e., message parameter portion) transmitted by a respective terminal device (i.e., message source) to the service provider (i.e., message server) as claimed. The claim does not recite that the terminal device which transmits the terminal device code is the device that receives the data, and thus, Appellants' argument is not commensurate in scope with the disputed claim limitation. Furthermore, although claims are interpreted in light of the specification, limitations from the specification (i.e., that the terminal device which transmits the terminal device code is the device that receives the data) are not read into the claims. *In re Van Geuns*, 988 F.2d at 1184. Moreover, Mankovitz teaches that the requestor of auxiliary information is also the recipient of that information (Finding of Fact 5). Thus, the combination also teaches that the terminal device can be the requestor and the recipient of the desired information.

For the foregoing reasons, Appellants have not persuaded us that the Examiner erred in rejecting representative claim 8 or claims 9-18 which fall with claim 8. Accordingly, we sustain the Examiner's rejections of those claims.

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CONCLUSION

The Appellants have not shown that the Examiner erred by determining that the Mankovitz and Levac combination teaches identifying data processing capabilities of terminal devices of the data users based on “a terminal device code transmitted by a respective terminal device to the service provider” as claimed.

ORDER

The decision of the Examiner to reject claims 8-18 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

KIS

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